THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO.967 of 2006

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17th January 2006

Between:

M. Ganga Bhavani, W/o. Durga Prasad,
R/o. 9-456, Santhinagar, Gudivada,
Krishna District.

...PETITIONER

AND

1 The Municipal Council, Gudivada Municipality, Rep.by its Chairperson, Gudivada, Krishna District.
2 Gudivada Municipality, Rep.by its Commissioner, Gudivada, Krishna District.

...RESPONDENTS

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO.967 of 2006

ORDER:

Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

The petitioner filed this Writ Petition seeking a Writ of Mandamus declaring the endorsement in ROC.No.3313/05-G signed by the second respondent on 31.12.2005 as illegal and a consequential direction to the first respondent to hear and dispose of the appeal filed by her in accordance with law.

The facts of the case are that the petitioner is the owner of the premises bearing No.9-356, Santhinagar, Gudivada of Krishna District. One Smt.J.Mahalaxamma filed a Writ Petition being W.P.No.16347 of 2005 stating that she has filed a representation dated 12.07.2005 before the respondents complaining that the petitioner constructed a building in deviation of the sanction plan and the said Writ Petition was disposed of directing the respondents to consider the said representation. Pursuant to the order of this Court, a notice dated 12.08.2005 was issued by the second respondent stating that the petitioner has maintained the side open space all-round the building towards East, West, North and South and nearly

about half of the side open spaces have been constructed. It is stated that Smt.J.Mahalaxamma objected for the constructions towards East of the building of the petitioner and accordingly, the petitioner was called upon as to why the unauthorized constructions shall not be demolished. As against the said notice, the petitioner filed a Writ Petition being W.P.No.18824 of 2005 which was disposed of by this Court on 24.08.2005 setting aside the said notice and once again the second respondent was directed to reconsider the matter after giving opportunity to the petitioner and the objectors, Sri J.B.K.Sasthry and Smt.J.Mahalaxamma and pass appropriate orders within four weeks from the date of receipt of that order. Pursuant to the order of this Court, a final notice dated 19.10.2005 was issued holding that the petitioner has unauthorisedly made certain constructions and she was called upon to demolish the same within thirty days from the date of receipt of that order. As against the notice dated 19.10.2005, the petitioner filed an appeal before the Gudivada Municipality represented by its Commissioner but the said appeal has been rejected with an endorsement dated 31.12.2005 on the ground that the Standing Counsel of the respondent-Municipality has given an opinion that the appeal is not maintainable in view of the fact that the petitioner has already filed a Writ Petition and that the appeal cannot be filed before the Chair Person.

The learned Standing Counsel appearing for the respondents submitted that he has never given such an opinion stating that no appeal lies before the Chair Person. It is further stated that he has never given opinion that the petitioner has filed a Writ Petition and the same was disposed of as such no appeal lies.

A perusal of the file goes to show that the appeal was not filed before the Chair Person but it was filed before the Municipality represented by its Commissioner and that the respondents have rejected the appeal without application of mind and on a distorted understanding of the legal opinion given by the Standing Counsel.

Having regard to the facts and circumstances of the case, the Writ Petition is disposed of and the impugned endorsement dated 31.12.2005 in rejecting the appeal is set aside directing the first respondent to hear the appeal afresh after giving notice and opportunity to the petitioner as well as the objectors, namely Sri J.B.K.Sasthry and Smt.J.Mahalaxamma and pass appropriate orders in accordance with law. No costs.

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(V.ESWARAIAH, J)

17th January 2006

Note: CC by two days

B/O

RRB